

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0723, State of New Hampshire v. Timothy Blais, the court on April 25, 2008, issued the following order:

The defendant, Timothy Blais, appeals his convictions for aggravated felonious sexual assault and felonious sexual assault. He argues that the trial court erred when it excluded evidence of the victim's father's criminal record after finding that it was irrelevant. We reverse and remand.

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. State v. Goupil, 154 N.H. 208, 225 (2006). Relevancy determinations are within the sound discretion of the trial court; we will not overturn its determination absent an unsustainable exercise of discretion. *Id.*

In this case, the defendant sought to elicit testimony that he knew that the victim's father had been convicted of homicide ten years before the alleged assault and that, because this knowledge caused him to fear the victim's father, he would not have committed the assaults. The issue before the jury was whether the defendant committed the assaults at the workplace of the victim's father. Evidence that the defendant feared the victim's father because of his previous homicide conviction could have made it less probable that the defendant would have committed the assault.

As the State notes, we have previously held that the practical conduct of a trial requires that there be a limit to inquiries upon collateral matters, even if relevant. See Lafferty v. Houlihan, 81 N.H. 67, 76 (1923). In this case, however, the trial court simply ruled that the evidence was irrelevant, see N.H. R. Ev. 401, and did not consider whether its probative value was outweighed by any other consideration, such as the danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time, see N.H. R. Ev. 403. Moreover, we cannot conclude based upon the record before us, that Rule 403 compelled exclusion of the evidence. See, e.g., State v. Elementis Chem., 152 N.H. 794, 802 (2005) (if appellate record indicates that reasonable fact finder would necessarily reach a certain conclusion supreme court may decide issue as matter of law).

The State also argues that even if the trial court erred in excluding evidence of the victim's father's conviction, any error was harmless. See State v. Wall, 154 N.H. 237, 245 (2006) (error harmless if State establishes beyond

reasonable doubt that alternative evidence of defendant's guilt is of overwhelming nature, quantity or weight, and if inadmissible evidence is merely cumulative or inconsequential in relation to strength of State's evidence of guilt). In this case, there were no witnesses to the assaults, and no physical evidence. The jury was required to weigh the testimony of the victim against that of the defendant. While the victim's testimony of the assaults was detailed, we cannot conclude that it was so overwhelming that any error in excluding evidence of her father's conviction was harmless.

Reversed and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**